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City of Monroe



Office of Mayor

C D CAPPUCCILLI, MAYOR

EX PARTE OR LATE FILED

June 27, 2002

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Federal Communications Commission
Office of the Secretary

Hon. Michael Powell
Chairman
Federal Communications Commission
445 12th St. S.W., Room 844
Washington, D.C. 20554

Re: FCC Declaratory Ruling, GN Docket No. 00-185, CS Docket No. 02-52 (the
'FCC Decision'); Relationship of Internet Services and Cable Franchise Fees

Dear Chairman Powell:

On behalf of the City of Monroe we wish to register strong concern on the unprecedented action you have taken in your March decision and Notice of Proposed Rulemaking on cable modems. In one order you have attempted to usurp both the powers of both Congress and state and local governments and violate the 11th Amendment to the U.S. Constitution, all in a manner detrimental to consumers. We ask that you reconsider and withdraw from these actions.

Your order usurps the powers of Congress by purporting to take action (reclassifying cable modem service as an information service) which only Congress can do. This is evident from the so-called Tauzin-Dingell Bill, which is making its way through Congress. Your order attempts to do what Congress in the Tauzin-Dingell Bill believed required legislation. This is stark evidence that your order is improper.

Your order also improperly infringes on the authority of state and local governments by indicating that cable companies can use their lines for cable modem service (or, apparently, other services) without additional local approval or compensation. The U.S. Supreme Court has long ruled that the Fifth Amendment to the U.S. Constitution (which prevents the government from taking property without compensation) protects state and local units of government just as much as it protects private property. We do not believe that you can take a permission granted a company to construct a line in certain areas for one purpose and then allow them to expand their lines anywhere throughout the city for other purposes without new agreements and appropriate compensation.

The Order also violates state's rights and the 11th Amendment especially in light of the U.S. Supreme Court's recent broad interpretation of state sovereignty and immunization of states against agency action. This decision and its underlying principles are directly applicable here where you are acting at the request of providers and are disregarding in many instances state constitutional provisions which specifically place the responsibility for rights of way with local units of government.

Finally, you have given short shifts to customer service for people having problems with cable modem service. One of the major areas of complaints that our city receives regarding the cable company is from residents with problems with cable

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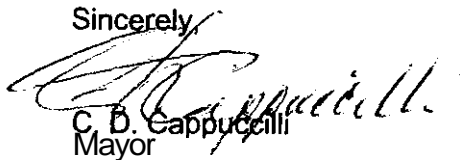
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modem service. You have now indicated, apparently, that we should not be involved in this.

Because you apparently believe that only you have jurisdiction over cable modem matters. do you now intend that you and your staff will handle cable modem customer service matters? If **so**, the FCC will need *to* add hundreds of people *to* handle complaints from citizens across the country that until now have been handled by cities such as ours.

We therefore strongly suggest that you withdraw your March order and Notice of Proposed Rulemaking in this matter.

Sincerely,



C. D. Cappuccilli
Mayor

CDC/pw

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